IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LOREN J. LARSON JR., Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11835 Trial Court No. 4FA-01-511 CI MEMORANDUM OPINION No. 6267 — January 13, 2016

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Michael P. McConahy, Judge.

Appearances: Loren J. Larson Jr., pro se, Wasilla. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Hanley, District Court Judge.[*]

Judge ALLARD.

Loren J. Larson Jr. was convicted of two counts of first-degree murder and one count of first-degree burglary.[1] Since the time of his convictions, Larson has filed

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

[1] *See Larson v. State*, 2000 WL 19199 (Alaska App. Jan. 12, 2000) (unpublished).

numerous petitions and appeals in both state and federal court, primarily advancing his claims that his trial was tainted by jury misconduct during jury selection and deliberation.[2]

Larson filed the present application for post-conviction relief in 2011.[3] In this application, he argued that the superior court violated his due process right to notice when it dismissed his earlier application for post-conviction relief in 2001 for reasons that had not been advanced in the State's motion to dismiss.[4] Larson argued that this procedural error entitled him to relief under Alaska Civil Rule 60(b)(4).[5] Larson further maintained that because he was raising a jurisdictional attack claiming that the 2001 judgment was void, his claim could not be dismissed under the doctrine of *res judicata*.

The superior court denied the application, and Larson appealed that decision to this Court. During oral argument on appeal, Larson argued for the first time that he was entitled to appointment of counsel in connection with his Civil Rule 60(b)(4) claim.

We conclude that the superior court properly dismissed Larson's 2011 application for post-conviction relief. Even if the superior court committed the

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[2] *See, e.g.*, *Larson v. State*, 79 P.3d 650 (Alaska App. 2003). For a more thorough procedural history of this case, see *Larson v. State*, 2013 WL 4012639 (Alaska App. June 26, 2013) (unpublished).

[3] Larson filed an petition for writ of habeas corpus, but we directed the superior court to treat it as an application for post-conviction relief under Alaska Criminal Rule 35.1. *See Larson v. Schmidt*, 2013 WL 6576742 (Alaska App. Dec. 11, 2013) (unpublished).

[4] *See Tall v. State*, 25 P.3d 704, 707-08 (Alaska App. 2001); *Hampton v. Huston*, 653 P.2d 1058, 1060 (Alaska App. 1982).

[5] Alaska Civil Rule 60(b)(4) provides: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... the judgment is void[.]"

procedural error Larson complains of, that would not render the court's judgment void under Civil Rule 60(b)(4): Larson had notice that his application was subject to dismissal for failure to state a prima facie case, and he had an opportunity to be heard on that issue.[6]

Moreover, Civil Rule 60(b)(4) "is not a substitute for a party failing to file a timely appeal, nor does it allow re-litigation of issues that have been resolved by the judgment."[7] If Larson believed the superior court erred by dismissing his 2001 application without giving him prior notice, he was required to raise that alleged procedural error in his direct appeal of the superior court's decision.[8] As the Alaska Supreme Court has explained, the doctrine of *res judicata* "precludes relitigation ... not only of claims raised in the [earlier] proceeding, but also [any] relevant claims that could have been raised."[9]

To the extent Larson argues that he raised this claim in his direct appeal and that this Court failed to directly address and rule on his claim, Larson's remedy was to seek relief from this Court on rehearing, or from the Alaska Supreme Court in a petition for hearing.[10]

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[6] *See McLaughlin v. State*, 214 P.3d 386, 390-91 (Alaska App. 2009) (Mannheimer, J., concurring) (explaining that for purposes of Civil Rule 60(b)(4), "a judgment is void only when the court was not properly constituted, or had no jurisdiction over the party or the subject matter, or when the party attacking the judgment was not given proper notice of the action and an opportunity to be heard, or when the court otherwise failed to comply with the basic requirements essential to the valid exercise of power by the court").

[7] *Cook v. Cook*, 249 P.3d 1070, 1083 (Alaska 2011) (quoting *Morris v. Morris*, 908 P.2d 425, 429 (Alaska 1995)).

[8] *See Larson*, 79 P.3d at 650.

[9] *Larson v. State*, 254 P.3d 1073, 1077 (Alaska 2011).

[10] *See Cook*, 249 P.3d at 1083.

Lastly, we find no merit to Larson's claim that his right to counsel was violated. Because Larson's current application is properly characterized as a successive application for post-conviction relief, he was not entitled to counsel under AS 18.85.100.[11]

The judgment of the superior court is AFFIRMED.

[11] *See* AS 18.85.100(c)(1) (providing that indigent applicants are not entitled to representation for purposes of bringing "untimely or successive" applications for post-conviction relief under AS 12.72).